



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 14.12.2012

+ **W.P.(C) 7656/2012**

MADUGULA VENU

..... Petitioner

Through: Mr. O. S. Bajpai, Sr. Adv. with Mr. Shashwat Bajpai and Ms. Manasvni Bajpai, Advocates.

versus

DIRECTOR OF INCOME TAX AND ORS

..... Respondent

Through: Ms. Suruchi Aggarwal, Sr. Standing Counsel.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE R.V. EASWAR

R. V. EASWAR, J: (OPEN COURT)

This writ petition has been filed seeking quashing of the search and seizure operation proceedings taken under section 132 of the Income Tax Act, 1961 ('Act', for short) and for further direction that no consequential action be taken against the petitioner as a result of search, including action pursuant to the notice dated 02.11.2012 issued under section 153A of the Act.

2. The brief facts resulting in the filing of the present petition are that the petitioner is an individual who files his returns of income in the status of a non-resident. He is said to be a qualified engineer employed in U.S.A., having left India in the year 1991. He owned house bearing No.F-58, First Floor, Green Park Main, New Delhi-110016. There was a search of the house on 05.03.2012 in the presence of the petitioner's step mother Smt. Swarnlata. A *panchnama* was drawn up inventorizing the materials seized during the search and the same is marked as Annexure P-2 to the writ petition. Pursuant to the



search and as required by section 153A of the Act, the assessing officer issued notices for the past six assessment years calling upon the petitioner to file returns of income.

3. The petitioner had earlier filed W.P. (C) No.1720/2012 questioning the legality of the search action. The writ petition was disposed of by this Court by order dated 27.03.2012 and the same is reproduced below: -

*“ORDER
27.03.2012*

Counsel for the Revenue has entered appearance on advance notice and the file relating to the satisfaction note was produced before us in a sealed cover. The sealed cover was opened and the file has been examined by us. We have also examined the preparatory note as well as documents on record in the said file. It is apparent that investigations are at the preliminary stage. Even notice under Section 153A of the Income Tax Act, 1961 has not been issued to the petitioner.

At this stage, learned counsel for the petitioner prays that the matter may be passed over in order to enable him to obtain instructions.

At 12 p.m.

The matter has been called at 12 noon. Mr. Bajpai, ld. senior advocate submits that he has obtained instruction and the writ petition may be treated as disposed of, with right to the petitioner to revive the petition in case notice under section 153A of the Income Tax Act, 1961 is issued.

We accept the statement made by Mr. Bajpai. The writ petition will be treated as disposed of with right to the petitioner to revive the present petition in case notice under 153A of the Income Tax Act, 1961 is issued.

We clarify that we have not expressed any opinion, which will prejudicially affect the interest of any of the parties, in case the writ petition is revived.”

*SANJIV KHANNA, J.
R.V. EASWAR, J.”*



4. It is pursuant to aforesaid order that the petitioner has filed the present writ petition since notices under section 153A have been issued in the meantime.

5. The contention put forward on behalf of the petitioner is that no material which would implicate him, in the earning of any undisclosed income was unearthed during the search and, therefore, there was no basis to issue the notice under section 153A. It is further pointed out that the petitioner has always been away from India and, therefore, could not have earned any undisclosed income in India and he could not in any event be held responsible for any alleged undisclosed income earned by his late father Dr. M. V. Rao. It is vehemently contended that the search as well as the notices issued under section 153A would only result in extreme harassment to the petitioner who is now required to file returns for the past six years and face the cumbersome assessment proceedings.

6. We are afraid that there is no merit in the contention. The file relating to the satisfaction note recorded prior to the issue of the search warrant was produced in Court by the learned senior standing counsel for the Income tax department, on advance notice at the preliminary hearing of the petition, in a sealed cover. It was opened in Court and we went through the satisfaction note, the preparatory note as well as the documents in the file. We are satisfied that there exists sufficient and relevant material which could form the basis of the satisfaction note and the reason to believe that the petitioner has earned income which was not disclosed to the income tax authorities. The record of the department was returned to the learned senior standing counsel in the Court.

7. Section 153A of the Act was introduced by the Finance Act, 2003 w. e. f. 01.06.2003 and it provides for assessment in the case of search or requisition. It is mandatory for the assessing officer, whenever there is a search under section 132, to



issue notice to the person searched requiring him to furnish the returns of income for the six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted. Once the returns are filed, the assessing officer shall assess or reassess the total income in respect of the each assessment year falling within the six assessment years. There is an Explanation to the section which provides that all other provisions of the Income Tax Act shall apply to the assessment made under this section, which means that the provisions of section 142, 143, etc. are applicable and these provisions ensure that reasonable opportunity is afforded to the petitioner to put forth his case. We are, therefore, unable to accept the contention of the petitioner that he would be put to harassment because of the notices issued under section 153A. The section is couched in mandatory language which implies that once there is a search, the assessing officer has no option but to call upon the assessee to file the returns of the income for the earlier six assessment years. It is not merely the undisclosed income that will be brought to tax in such assessments, but the total income of the assessee, including both the income earlier disclosed and income found consequent to the search, would be brought to tax. The normal provisions relating to inquiry, affording opportunity, etc., which are provided for in sections 142, 143, etc. are to be followed by the assessing officer. There is also a time limit for completion of the assessment under section 153A which is prescribed in section 153B. In these circumstances the petitioner's contention that he would be put through unnecessary harassment is a non-starter. He has to face the assessment proceedings and participate in them; in case he has evidence or material to show that he has not earned any income which is not disclosed to the income tax authorities or to rebut the material gathered during the search, it is perfectly open to him to do so. In fact, it is his right which is well protected by various provisions of the Income Tax Act. Appeal remedies are also available against the assessment framed. The apprehension of the petitioner is unfounded. This court is also of the opinion that frequent recourse to remedies under Article 226, similar to this one, are more often than not, speculative, and intended to delay and stall adjudication proceedings, which would



have to take place. The scope of interference in these proceedings is limited to seeing whether there was a satisfaction recorded by the concerned officials. That part had been achieved by the previous writ proceedings; the only liberty reserved was to seek remedies in case the petitioner was issued notice under Section 153A. In the present case however the entire gamut of issues relating to the recording of satisfaction, and facts pertaining thereto were canvassed, to suggest that the notice was issued mindlessly. While the Court is conscious of a certain degree of hardship which would occur to any assessee whose premises are searched, that does not afford it any higher right or confer greater remedies, or expand the scope of a limited jurisdiction under Article 226. The present petition is therefore speculative, and misconceived.

8. For the above reasons we see no merit in the writ petition. It is accordingly dismissed, with costs quantified at ₹75,000/- payable to the Prime Minister's relief fund. The petitioner is directed to deposit the same within four weeks, and place the receipt thereof on the file of this court. The registry shall list this petition to record compliance, on 01.02.2013.

R.V.EASWAR, J

S. RAVINDRA BHAT, J

DECEMBER 14, 2012

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